

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION
GENERAL CHANCERY SECTION

ROBERT LOBIANCO,

Petitioner,

v.

CITY OF CHICAGO POLICE BOARD AND THE
SUPERINTENDENT OF CHICAGO POLICE,

Respondents.

Case No. 2018 CH 7495

Consolidated with

KEVIN FRY,

Petitioner,

v.

CITY OF CHICAGO POLICE BOARD AND THE
SUPERINTENDENT OF CHICAGO POLICE,

Respondents.

Case No. 2018 CH 7752

Calendar 03
Honorable Franklin U. Valderrama

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on Petitioner, Robert Lobianco's Petition for Administrative Review. For the reasons that follow, Lobianco's Petition is denied.

INTRODUCTION

Petitioner, Robert Lobianco ("Lobianco") was a Chicago Police Officer. On May 17, 2018, Respondent, the City of Chicago Police Board (the "Board") found him guilty of violating certain rules of the Chicago Police Department and discharged him from his position as a Chicago Police officer. Lobianco seeks review of the Board's decision.

BACKGROUND

On July 25, 2013, Lobianco and his partner Kevin Fry ("Fry") responded to a 911 call in the 9500 block of S. Avenue M (the "Premises") of a person calling for help (the "Incident").

Lobianco and Fry arrived at the Premises, and heard yelling coming from inside the garage located on the Premises. Fry banged on the overhead garage door, and after receiving no

response, Lobianco and Fry went to find another entrance to the garage. When they located another entrance to the garage, referred to in the record as the “service door” Lobianco banged on the service door, identified himself as a police officer and ordered the occupants to open the door. Lobianco kicked in the service door. Lobianco and Fry found two individuals inside the garage, Frank Vasquez (“Vasquez”) and Cheyenne Bailey (“Bailey”). At some point there was a physical struggle between Fry, Lobianco, and Vasquez. Vasquez was ultimately arrested.

Lobianco prepared an arrest report following the Incident (the “Arrest Report”), in which he stated that when he and Fry forced entry into the garage, he observed Vasquez on top of Bailey, and that Vasquez became an assailant and active resister before he was placed under arrest. (R 14). Fry completed the Original Case Incident Report associated with Vasquez’s arrest (the “Incident Report”). In the narrative section of the Incident Report, Fry wrote that he and Lobianco “observed Frank Vasquez (Offender & Ex-boyfriend) on top of Cheyenne Bailey (Victim and Complainant), who was on the ground with Vasquez physically restraining Bailey.” (R 463, 555).

Bailey later signed a domestic battery misdemeanor complaint against Vasquez in connection with the Incident, which stated:

In that he/she without legal justification knowingly/intentionally caused bodily harm to Cheyenne N. Bailey, an ex-girlfriend of the defendant (Mr. Vasquez) in that said defendant forcibly pushed complainant causing her to fall on the ground causing pain and scratches on her arms.

(R 14).

Vasquez’s criminal bench trial (the “Criminal Trial”) took place on November 7, 2013. At the Criminal Trial, Lobianco testified that when he first entered the garage, he saw Vasquez on top of Bailey, and that he and Fry had to remove Vasquez from Bailey. Fry testified that he entered the garage five seconds after Lobianco and that he observed Bailey still on the ground with Vasquez holding her down. Vasquez, on the other hand, denied that he was on top of Bailey when Lobianco and Fry entered the garage, and presented video footage in support of his defense. The video, which was recorded from a security camera on the Premises showed that Vasquez and Bailey were standing and that Vasquez was in the process of opening the service door when Lobianco kicked the door in. Vasquez was acquitted at the conclusion of the one day trial.

On December 2, 2013, Vasquez filed a complaint with the Independent Police Review Authority (“IPRA”) regarding the alleged misconduct of Lobianco and Fry. IPRA closed its investigation on February 6, 2014, as Vasquez did not provide an affidavit to support his complaint. (R 125). On March 31, 2016, IPRA reopened its investigation based on the video footage that Vasquez presented at the Criminal Trial. IPRA completed and closed its investigation on January 5, 2017, and thereafter the Superintendent filed the instant charges against Lobianco and Fry.

On June 29, 2017, the Superintendent of the Chicago Police Department (the “Superintendent”) filed charges against Lobianco for violation of Rules 1, 2, and 14 of the

Chicago Police Department Rules and Regulations. The charges allege that Lobianco falsely stated in the Arrest Report that he observed Vasquez on top of the victim, Bailey, when he responded to the Incident. Lobianco was also charged with making a false statement to that effect during his testimony at the Criminal Trial.

On June 25, 2018, Lobianco and Fry filed a Joint Motion to Strike and Dismiss all Charges (the “Motion”). The Motion argued, among other things, that Fry and Lobianco’s rights to due process were violated because the Superintendent failed to bring timely charges. The motion also sought dismissal based on the doctrine of laches. The Motion was denied in its entirety.

On February 27 and 28, 2018, a hearing took place before Hearing Officer Jeffrey Cummings (the “Hearing”). Because the charges against both Fry and Lobianco arose from the same underlying Incident, the Board held a consolidated hearing. Vasquez, Lobianco, and Fry, among others testified at the Hearing. The Hearing Officer found Lobianco guilty on all charged rule violations in relation to his statement that he observed Vasquez on top of Bailey. The Board adopted those findings and issued an order discharging Lobianco and Fry from their respective positions as police officers.

Lobianco subsequently filed a Petition for Administrative Review arguing that the Board’s decision was arbitrary and capricious, against the manifest weight of the evidence, clearly erroneous, and contrary to the governing law and regulations based on the totality of the record. Lobianco’s fully briefed Petition is presently before the Court.

ADMINISTRATIVE REVIEW STANDARD

Final administrative decisions of the Board are subject to judicial review under the Administrative Review Law, 735 ILCS 5/3-101, *et seq.* (West 2016). On administrative review, the standard of review applied by the trial court depends on the issues presented on review. *Express Valet Inc. v. City of Chi.*, 373 Ill. App. 3d 838 (1st Dist. 2007). There are three types of questions that courts may encounter on administrative review of an agency’s decision: (1) questions of fact, (2) questions of law, and (3) mixed questions of fact and law. *Cinkus v. Vill. of Stickney Mun. Officers Electoral Bd.*, 228 Ill. 2d 200, 210 (2008). However, under any standard of review, a plaintiff to an administrative proceeding bears the burden of proof, and relief will be denied if he or she fails to sustain that burden. *Marconi v. Chi. Heights Police Pension Bd.*, 225 Ill. 2d 497, 532 (2006).

On administrative review, an administrative agency’s findings and conclusions of fact are deemed to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2016); *O’Boyle v. Personnel Bd. of Chi.*, 119 Ill. App. 3d 648, 653 (1st Dist. 1983). Consequently, when a decision presents purely a question of fact, the standard of review to be applied is whether the findings of fact are against the manifest weight of the evidence. *Belvidere v. Ill. State Labor Relations Bd.*, 181 Ill. 2d 191, 204 (1998). An administrative agency’s factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion than that reached by the agency is clearly evident. *Wade v. City of North Chi. Police Pension Bd.*, 226 Ill. 2d 485, 505 (2007). In examining an administrative agency’s factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency.

Cinkus, 228 Ill. 2d at 210. Indeed, “a reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence.” *Alden Nursing Ctr.-Morrow, Inc. v. Lumpkin*, 259 Ill. App. 3d 1027, 1033 (1st Dist. 1994). If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board’s decision should be sustained. *O’Boyle*, 119 Ill. App. 3d at 653. Because the weight of the evidence and the credibility of the witness are within the province of the agency, there need only be some competent evidence in the record to support its findings. *Trettenero v. Police Pension Fund of the City of Aurora*, 333 Ill. App. 3d 792, 802 (2d Dist. 2002). Although “manifest weight of the evidence” is a high standard of review, it does not relieve the court of its duty to examine the evidence in an impartial manner and set aside an agency order that is unsupported in fact. *Boom Town Saloon, Inc. v. City of Chi.*, 384 Ill. App. 3d 27, 32 (1st Dist. 2008). When there is evidence to support the agency’s findings, its decision will be affirmed. *Commonwealth Edison Co. v. Prop. Tax Appeal Bd.*, 102 Ill. 2d 443, 467 (1984).

When an agency’s decision comes before a trial court challenging a question of law, the agency’s findings are not binding on a reviewing court and the agency’s decision is reviewed *de novo*. *Cinkus*, 228 Ill. 2d at 210. While an agency’s interpretation of a statute is a question of law, a court should afford substantial deference to an agency’s interpretation of a statute which the agency administers, as an agency is presumed to make informed judgments based on its experience and expertise substantial deference should be given to its statutory interpretation. *Kaszynski v. Ill. Dep’t of Public Aid*, 274 Ill. App. 3d 38, 41 (3d Dist. 1995); *Swoope v. Ret. Bd. of the Policemen’s Annuity & Benefit Fund*, 323 Ill. App. 3d 526, 529 (1st Dist. 2001).

Finally, mixed questions of law and fact are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Cinkus*, 228 Ill. 2d at 210. Where a question of an agency’s decision is a mixed question of law and fact, it is subject to the “clearly erroneous” standard of review. *Marconi*, 225 Ill. 2d at 532. An administrative agency’s decision is deemed “clearly erroneous” when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Cinkus*, 228 Ill. 2d at 210.

DISCUSSION

Lobianco argues, first, that the Board’s findings should be reversed because they are clearly erroneous. Lobianco submits that a review of the record reveals that the Board erred in finding Lobianco guilty of violating Rules 1, 2 and 14 in relation to his statements that he observed Vasquez on top of Bailey when he responded to the call on July 25, 2013. Specifically, Lobianco contends that the Board’s credibility findings were unsupported and contradicted, and that the Board erroneously applied the Illinois perjury statute. As the decision of the Board involves mixed questions of law and fact, asserts Lobianco, it is subject to the “clearly erroneous” standard of review, citing *Marconi*, 361 Ill. App. 3d at 16.

Lobianco contends that the Court can review credibility determinations, citing *Kouzoukas v. Retirement Board of the Policemen’s Annuity*, 234 Ill. 2d 446, 465 (2009). Lobianco asserts that the Board’s credibility determinations are contrary to the evidence, and should not be afforded any deference. Lobianco notes that the Board found Vasquez’s testimony to be credible, in spite of the fact that it was “somewhat erratic and uneven” and that Vasquez on several

occasions claimed he could not recall certain things. (R 16). Moreover, observes Lobianco, Vasquez initially denied pushing Bailey, and later admitted that he pushed her. Lobianco asserts that the Board's reliance on Vasquez's candor in "providing unflattering testimony" is misplaced and unsupported by the record.

Lobianco also takes issue with the Board's finding that the video of the Incident corroborated Vasquez's account. According to Lobianco, the video is of poor quality, dark, and grainy. Lobianco's testimony at the hearing, he notes, was that the video did cause him to change his mind as to what he thought he saw the night of the Incident, and that the video did not particularly refresh his memory as to a different order of events.

According to Lobianco, he acknowledged in his testimony that he may have made a mistake. However, Lobianco notes that the Board discredits this acknowledgment, holding that it was not believable because in his report and during his testimony during the Criminal Trial, he was unequivocal that he saw Vasquez lying on top of Bailey. However, argues Lobianco, the Superintendent never presented any evidence that he had any previous opportunity to clarify his statements. Moreover, contends Lobianco, he did not see the video at the Criminal Trial. For these reasons, concludes Lobianco, the Board's credibility determinations are unsupported or contradicted by actual testimony and the record, and as such the Board's ruling should be reversed.

Next, Lobianco argues that there was no evidence that his statements were material, knowing or willful. Regarding Rule 1, notes Lobianco, the Superintendent charged Lobianco with violation of the Illinois perjury statute, which requires the false statement to be material to the issue or point in question. In addition, Lobianco states that he was charged with a violation of Rule 14, and that in order to sustain a Rule 14 violation, the Superintendent must prove that: (1) the Officer willfully made a false statement; and (2) the false statement was material to the investigation.

Here, contends Lobianco, there was no evidence adduced at the hearing that Lobianco knew the statements were false at the time of utterance or that he willfully made a false statement. To the contrary, insists Lobianco, his testimony at the hearing was that the statements contained in the Arrest Report and his testimony at the Criminal Trial were based on his recollection of what he saw in the garage on the night of the Incident, and were a mistake. Lobianco asserts that the Board's finding was based upon its conclusion that it was not possible to believe that Lobianco, as a seasoned tactical officer, could have made such a mistake. Lobianco maintains that there was no evidence that seasoned tactical officers are infallible and make no mistakes.

Further, Lobianco contends that there was no evidence that his alleged misstatement that he observed Vasquez on top of Bailey when he entered the garage was material. In order to prove domestic battery against Vasquez, submits Lobianco, the prosecution was required to prove that Vasquez "without legal justification knowingly/intentionally caused bodily harm to Cheyenne N. Bailey, an ex-girlfriend of the defendant in that said defendant forcibly pushed complainant causing her to fall to the ground causing pain, and scratches on her arms." Thus, reasons Lobianco, testimony as to whether Vasquez was on top of Bailey on the ground when he entered the garage is not material to the issue tried.

Next, Lobianco addresses the discipline imposed for the alleged rule violations. A finding of cause for discharging an employee should be overturned, asserts Lobianco, if it is arbitrary and unreasonable, and unrelated to the requirements of service, citing *Walsh v. Board of Police and Fire Commissioners*, 96 Ill. 2d 101 (1983). Lobianco contends that discharge is an arbitrary, capricious, excessive and unreasonable discipline. Lobianco notes that his service to the City has been recognized personally and professionally, and that he has earned a total of 225 awards during his career. In addition, Lobianco notes that at the hearing he presented character witnesses that described him as a hardworking man of high integrity. As such, Lobianco urges the Court to consider his exemplary history, character testimony, and his success in his career in finding the Board's penalty of discharge drastic, excessive, unreasonable and arbitrary.

The Superintendent responds that the Board's factual findings are held to be *prima facie* true and correct, and will not be disturbed unless they are contrary to the manifest weight of the evidence, citing 735 ILCS 5/3-110. The Superintendent argues that on administrative review, a court cannot reweigh the evidence or the determination of credibility of the witnesses, citing *Haynes v. Police Bd. Of Chicago*, 293 Ill. App. 3d 508 (1st Dist. 1997).

Here, notes the Superintendent, the Board's main factual finding is that Vasquez was not atop Bailey when Lobianco entered the garage, and thus Lobianco could not have seen Vasquez on top of Bailey when he entered the garage. The Superintendent therefore found that Lobianco was lying when he wrote in the Arrest Report that Vasquez was on top of Bailey, and when he testified under oath that he saw Vasquez on top of Bailey. As there is ample evidence in the record to support these findings, notes the Superintendent, they are not against the manifest weight of the evidence. Specifically, the Superintendent points to Vasquez's testimony that he was in the process of opening the door from inside the garage when Lobianco kicked it in, and that he and Bailey were standing. According to the Superintendent, the Board found this testimony to be corroborated by video footage from the security camera in the area. While Lobianco testified that Vasquez and Bailey were on the ground when he kicked in the door to the garage, the Board found his testimony less credible.

In making its credibility determination, notes the Superintendent, the Board considered Lobianco's previous unequivocal assertions that he observed Vasquez on top of Bailey, contrasted with his equivocation as to that point at the Hearing. The Superintendent emphasizes that the Board found that the difference between the alternative versions of what occurred is so dramatic that it is simply not possible to believe that Lobianco and Fry could have been mistaken about their testimony. (R 19-20).

Having found that Lobianco lied when he wrote in the Arrest Report that Vasquez was on top of Bailey, the Board determined that he violated, *inter alia*, Rule 14, making a false report whether written or oral. For a Rule 14 violation under the relevant labor contract applying to police officers, notes the Superintendent, the false report must be both "willful" and "material." According to the Superintendent, the Board's finding that Lobianco lied rather than being mistaken means that the false statement was willful. Regarding the materiality requirement for a Rule 14 violation, the Superintendent posits that because the false statement was written in the Arrest Report documenting the basis for Vasquez's arrest for domestic battery, the fact that the officers observed the offender on top of the victim is material to the charge.

As to the perjury charge, the Superintendent maintains that Lobianco knowingly made a false statement, and that it was material. Knowledge of the falsity of a statement, asserts the Superintendent, may be inferred from proof that the statements in question were in fact false, citing *People v. Boyd*, 81 Ill. App. 3d 259, 261 (3rd Dist. 1980). As to the materiality, the Superintendent argues that the fact that the false statement had a tendency to influence a judge that Vasquez had pushed Bailey and caused her to fall is sufficient to prove materiality. The Superintendent concludes that the Board's findings are well supported by the evidence in the record and should be affirmed.

Further, the Superintendent contends that an administrative agency's finding of cause of discharge is entitled to considerable deference, and should be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of service. Lobianco's falsification of an Arrest Report and perjury, contends the Superintendent, go to the very essence of his job as a police officer, citing *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011). As such, the Superintendent concludes that the Court should affirm the Board's decision discharging Lobianco.

Lobianco retorts that the Board's credibility determinations are not immune from review, and here, where the Board's determinations are unsupported and/or directly contradicted by the record, those determinations must be set aside. Lobianco maintains that Vasquez's testimony at the Hearing was incredible, considering his claimed lack of memory and certain contradictions in his testimony, including whether he had physical contact with Bailey. Lobianco asserts that Vasquez's testimony at the Hearing contradicted his statement provided to the IPRA. Lobianco insists that he had no opportunity to review the video footage presented by the Superintendent prior to the Hearing that would have allowed him to provide an explanation or acknowledge a mistake.

Lobianco maintains that the Board's ruling cites no evidence, exhibit or testimony wherein it bases the decision that Lobianco's statements were willfully made, false, knowing and/or material. Regarding the materiality requirement, Lobianco insists that his statement that he observed Vasquez on top of Bailey is not material to the issue of whether he committed a domestic battery against Bailey.

Finally, Lobianco submits that the Board's decision to discharge him was arbitrary, capricious, excessive, and unreasonable in light of the awards he has won and the fact that he has zero disciplinary history. Lobianco maintains that he was a successful police officer and that he presented significant mitigation evidence, which should have been considered by the Board. As such, Lobianco concludes that the decision to discharge him should be reversed.

At the outset, the Court notes that in his Brief in Support of Administrative Review, Lobianco mentions in passing that he seeks review of the Board's denial of the Motion to Strike or Dismiss made prior to the Hearing. This is a wholly undeveloped request with no authority offered in support, and thus the Court will not entertain it. The Court turns then to the Petition.

In this case, Lobianco is charged with violating Rules 1, 2, and 14 contained in Article V of the Rules and Regulations of the Chicago Police Department, which were in full force and

effect on the date of the alleged violations. Specifically, Lobianco was charged with the following violations:

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 14: Making a false report, written or oral.

Lobianco was charged with violating Rules 1 and 2 for allegedly committing perjury by falsely testifying at the Criminal Trial. (R 1). Lobianco was charged with a violation of Rules 1, 2, and 14 for allegedly falsely reporting in the Arrest Report that he observed Vasquez on top of Bailey. (R 1). Lobianco advances several arguments seeking reversal of the Board's decision. The Court addresses each in turn.

A. Whether the Board's Fact and Credibility Findings Are Against the Manifest Weight of the Evidence

As a preliminary matter, Lobianco argues that the Board's findings are clearly erroneous. However, with respect to his arguments that the Board's credibility and factual determinations are "contrary to the evidence," the standard of review is the "manifest weight of the evidence."

In examining an administrative agency's factual findings, a reviewing court does not weigh the evidence or substitute its judgment for that of the agency. *Cinkus*, 228 Ill. 2d at 210. Indeed, "a reviewing court may not re-evaluate the credibility of witnesses or resolve conflicting evidence." *Alden Nursing Ctr.-Morrow, Inc.*, 259 Ill. App. 3d at 1033. If the issue before the reviewing court is merely one of conflicting testimony and credibility of witnesses, the administrative board's decision should be sustained. *O'Boyle*, 119 Ill. App. 3d at 653. The assessment of the credibility of the witnesses is exclusively within the province of the agency. *Trettenero v. Police Pension Fund*, 333 Ill. App. 3d 792, 802 (2nd Dist. 2002). Moreover, to the extent that the Court can review credibility determinations, as addressed in *Kouzoukas*, the Court nevertheless finds that the Board's credibility determinations are not against the manifest weight of the evidence. While Lobianco notes that Vasquez stated at times that he could not recall certain things, Vasquez's testimony was corroborated by the video evidence reviewed by the Board. As to Lobianco's testimony, the Board found that it was not believable that he could have been mistaken about how the Incident occurred, as the Board found this to be at odds with the character testimony presented as well as Lobianco's experience. (R 20). The Court finds competent evidence in the record in support of the Board's credibility determinations. Thus, the Court will not disturb the Board's credibility findings, namely, that Vasquez's testimony was credible, and that Lobianco's testimony was not credible.

The Court turns next to the Board's finding that Vasquez was not on the ground atop Bailey when Lobianco entered the garage. Although "manifest weight of the evidence" is a high standard of review, it does not relieve the court of its duty to examine the evidence in an impartial manner and set aside an agency order that is unsupported in fact. *Boom Town Saloon*,

Inc., 384 Ill. App. 3d at 32. When the agency decision contains no valid findings or explanation for its decision, remand to the agency is appropriate. *Violette v. Dep't of Healthcare & Family Servs.*, 388 Ill. App. 3d 1108, 1113 (5th Dist. 2009). On the other hand, when there is evidence to support the agency's findings, its decision will be affirmed. *Commonwealth Edison Co.*, 102 Ill. 2d at 467. Here, there was ample evidence in the record to support the Board's finding that Vasquez was not on top of Bailey when Lobianco entered the garage. Specifically, there was video footage recorded of the Incident that corroborated Vasquez's testimony that he was standing in front of the door, and not on top of Bailey, when Lobianco kicked in the service door. (R 16-18).

Thus, the Court concludes that the Board's findings that: (1) Vasquez and Bailey were standing when they entered the garage; and (2) that Lobianco made false statements and testimony on this issue are not against the manifest weight of the evidence.

B. Whether the Board's Finding that Lobianco Violated Rules 2 and 14 by Falsely Reporting in an Arrest Report that he observed Vasquez on top of Bailey is Clearly Erroneous or Against the Manifest Weight of the Evidence

The Collective Bargaining Agreement between the Fraternal Order of Police Chicago Lodge No. 7 and the City of Chicago provides in Article 6, Section 6.1M that "the Employer shall not charge an officer with a Rule 14 violation unless it has been determined that: (1) the officer willfully made a false statement; and (2) the false statement was made about a fact that was material to the incident under investigation." (R 27). The Board found that both elements were proven in Lobianco's case. Specifically, the Board found that the Superintendent proved that Lobianco's statement that he observed Vasquez on top of Bailey was willfully made and was false, and that it was material to the investigation.

Lobianco argues that there was no evidence adduced at the hearing that he knew the statements were false at the time of utterance or that he willfully made a false statement. To the contrary, insists Lobianco, his testimony at the hearing was that the statements contained in the Arrest Report and his testimony at the Criminal Trial were based on his recollection of what he saw in the garage on the night of the Incident, and were a mistake. The Board, however, determined that Lobianco's testimony that he was mistaken as to the Incident was not credible.

While Lobianco argues that the Superintendent did not put on evidence that he was not mistaken, this is incorrect. The Superintendent presented the testimony of Vasquez as well as the video recording of the Incident to support his argument that Lobianco could not have been mistaken about what he had seen. In the absence of such a mistake, the Board concluded that Lobianco's statement that he observed Vasquez on the ground on top of Bailey must have been willful.

The Court turns, then, to whether the misstatement was material. As to the materiality of the statement in the Arrest Report, the Board further found that the statement that Vasquez was lying on top of Bailey, if believed, would tend to prove that Vasquez "forcibly pushed [Bailey] causing her to fall on the ground" as is alleged in the domestic battery complaint against Vasquez. Moreover, the Board found that this statement could influence the trier of fact.

Lobianco appears to argue that the Board's determination that he violated Rules 2 and 14 with respect to the Arrest Report is to be reviewed under the clearly erroneous standard. The Superintendent challenges this standard, stating that the manifest weight of the evidence standard applies, as the facts are greatly disputed. The Court agrees with Lobianco that this issue is subject to review under the "clearly erroneous" standard.

Mixed questions of law and fact are questions in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard. *Cinkus*, 228 Ill. 2d at 210. Where a question of an agency's decision is a mixed question of law and fact, it is subject to the "clearly erroneous" standard of review. *Marconi*, 225 Ill. 2d at 532. An administrative agency's decision is deemed "clearly erroneous" when the reviewing court is left with the definite and firm conviction that a mistake has been committed. *Cinkus*, 228 Ill. 2d at 210. "[A]n examination of the legal effect of a given state of facts involve a mixed question of fact and law" subject to the "clearly erroneous" standard of review. *City of Belvidere*, 181 Ill. 2d at 205.

After reviewing the record, the Court is not left with the definite and firm conviction that a mistake has been committed. Specifically, the Court finds that Lobianco has not established that the Board misapplied the law by finding that Lobianco's misstatement in the Arrest Report was (1) willfully made, and (2) material. As discussed above, the Court affirms the Board's finding that Lobianco's statement was false and was willfully made. Moreover, Lobianco has not established that the statement was not material. Examining the legal effect of such facts, the Court finds that the Board properly applied these facts to the law in finding a Rule 14 violation.

Even if the Court applies the "manifest weight of the evidence" standard, the result is the same. An administrative agency's factual findings are against the manifest weight of the evidence if no trier of fact could have agreed with the agency or an opposite conclusion than that reached by the agency is clearly evident. *Wade v. City of North Chi. Police Pension Bd.*, 226 Ill. 2d 485, 505 (2007). As discussed above, there is evidence in the record to support the Board's findings that Lobianco's statement was both false and willfully made. There is also evidence in the record that the statement was material to the issue in question. Therefore, the Court finds that an opposite conclusion to the one reached by the Board is not clearly evident. As such, the Board's finding that Lobianco violated Rules 2 and 14 by making a false statement in the Arrest Report is not against the manifest weight of the evidence.

C. Whether the Board's Finding that Lobianco Violated Rule 1 for Perjury is Clearly Erroneous

Lobianco next argues that the Board's determination that he violated the Illinois perjury statute is clearly erroneous. The Illinois perjury statute provides:

A person commits perjury when, under oath or affirmation, in a proceeding or in any other matter where by law the oath or affirmation is required, he or she makes a false statement, material to the issue or point in question, knowing the statement is false.

720 ILCS 5/32-1(a) (West 2013).

Here, the proper standard is the “clearly erroneous” standard. For the reasons discussed above, the Court finds that the Board’s finding that Lobianco’s misstatement in his testimony at the Criminal Trial was knowingly and willfully made is not clearly erroneous. The Court further finds that Lobianco has failed to establish that the misstatement at the Criminal Trial was not material to the issue or point in question. As such, the Court finds that Lobianco has failed to demonstrate the Board’s finding that Lobianco violated the Illinois perjury statute, and consequently Rule 1, is clearly erroneous. The Board’s finding that Lobianco violated Rules 1 and 2 by making false statements at the Criminal Trial was not clearly erroneous.

D. Whether Discharge of Lobianco is Unreasonable, Arbitrary, or Unrelated to the Purpose of the Relevant Statute.

Review of an administrative agency’s discharge decision requires a two-step analysis. *Siwek v. Police Board of the City of Chicago*, 374 Ill. App. 3d 735, 737 (5th Dist. 2007). First, the Court must determine whether the agency’s finding of guilt is against the manifest weight of the evidence. Second, the Court must determine whether the factual findings supported its determination that cause for discharge existed. *Id.*

Cause has been defined as “some substantial shortcoming that renders the employee’s continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and that the law and sound public opinion recognize as good cause for his no longer holding the position.” *Sangirardi v. Village of Stickney*, 342 Ill. App. 3d 1, 17-18 (1st Dist. 2003). An administrative tribunal’s finding of cause for discharge is to be overturned only if it is arbitrary and unreasonable or unrelated to the requirements of the service. *Walsh v.*, 96 Ill. 2d at 105.

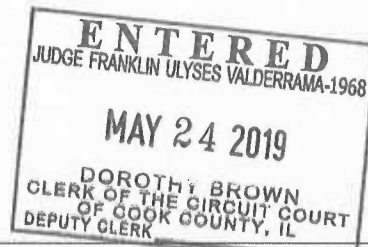
As discussed above, the Court finds that the Board’s findings of guilt were not against the manifest weight of the evidence. The Court now considers whether the factual findings support the Board’s determination that cause for discharge existed. The record in this case establishes that the penalty of discharge was imposed because of the seriousness of the misconduct at issue. (R 32). Specifically, the Board found that Lobianco’s misconduct was incompatible with continued service as a police officer and warrants his discharge, as he knowingly and intentionally falsified official police reports and lied under oath at a criminal trial. (R 32). According to the Board, such conduct is “antithetical to that expected and required of a police officer, who at all times has a duty to act with honesty and integrity, not falsify reports and commit perjury in the course of one’s official duties.” (R 32). While Lobianco asserts that discharge is arbitrary, capricious, excessive and unreasonable, Lobianco fails to articulate how the penalty of discharge for making false statements is unreasonable or unrelated to his employment as a police officer. The Court finds that Lobianco has not met his burden in establishing that the factual findings do not support the Board’s determination.

Lobianco emphasizes the commendations he received while serving on the police force, as well as the character evidence provided at the hearing. However, the Board considered Lobianco’s accomplishments and decided that they did not outweigh the seriousness of the misconduct in this case. Moreover, an administrative agency need not give mitigating evidence sufficient weight to overcome a determination decision. *Siwek*, 374 Ill. App. 3d at 738. Thus, the Board’s imposition of the sanction of discharge is not unreasonable or arbitrary.

CONCLUSION

For the foregoing reasons, Petitioner, Robert Lobianco's Petition for Administrative Review is denied.

ENTERED:



Franklin U. Valderrama, Judge Presiding

DATED: May 23, 2019
